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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91223751
Party	Plaintiff The Chachi Gonzales Brands, LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

THE CHACHI GONZALES BRANDS,
LLC,

Petitioner,

v.

GUADALUPE GONZALES dba
CHACHIMOMMA,

Registrant.

Cancellation No.: 92064249

Registration No.: 4782005

MOTION TO CONSOLIDATE AND RE-SET DEADLINES

I. Introduction

Pursuant to Federal Rule of Civil Procedure (“FRCP”) 42(a), and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 511, The Chachi Gonzales Brands LLC (“Petitioner”) hereby brings this Motion to Consolidate and Re-Set Deadlines in the above referenced cancellation proceeding by adopting the dates of the most recently instituted consolidated case.

II. Statement of Facts

On July 21, 2015, The Chachi Gonzales Brands LLC (“Petitioner”) filed a Petition for Cancellation of the mark “CHACHI MOMMA” (Reg. No. 4220215), TTAB Proceeding No. 92061870. On September 9, 2015, Petitioner filed Notices of Opposition against applications for “CHACHI” (Appl. Ser. No. 86490522), TTAB Proceeding No. 91223750, and applications for “CHACHI” (Appls. Ser. Nos. 86490519 and 86490548), and “CHACHI MOMMA” (Appls. Ser. Nos. 86490858 and 86490857) for use on or in connection with clothing and wearing apparel and

a variety of related goods and services. On October 20, 2015, the Parties jointly moved to consolidate the proceedings, and the motion was granted on October 27, 2015 under Proceeding No. 91223750 (the “Consolidated Proceeding”).

On August 16, 2016, Petitioner filed a Petition to Cancel Reg. No. 4782005 for CHACHIPANTS, TTAB Proceeding No. 92064249. As shown in the file history for the ‘005 Reg., there are clearly related issues across the proceedings that should be open for discovery by the parties. For example, the specimen of record in the ‘005 Reg. features an apparently unconsented use of the name and likeness of Petitioner’s principal, Olivia “Chachi” Gonzales, along with the statement, “A Chachi Gonzales Brand”, which is not the case. The issues raised by this and other anticipated discoverable evidence in the ‘249 Proceeding are likewise germane to the Consolidated Proceeding.

This cancellation proceeding was commenced prior to the conclusion of Petitioner’s testimony period in the Consolidated Proceeding. This new cancellation and the pending Consolidated Proceeding involve common questions of law and fact, such that the latest cancellation proceeding should be consolidated with the Consolidated Proceeding.

Additionally, Petitioner submits that upon consolidation, the dates for the Consolidated Proceeding should be reset by adopting the dates as set in the most recently instituted case, pursuant to TBMP § 511 (“Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated.”). Re-setting and adopting the most recently instituted deadlines is particularly appropriate in this case, given that (1) discovery is necessary in any case, to enable Applicant to respond to the new opposition proceeding; (2) the parties can efficiently conduct discovery relating to the new cancellation and the Consolidated Proceeding; and (3) adoption of the most

recently instituted deadlines of the Consolidated Proceeding will not unfairly prejudice either party.

III. Legal Argument

A. This New Opposition Proceeding and the Pending Consolidated Proceeding Involve Common Questions of Law and Fact, and Should Be Consolidated.

When cases involving common questions of law or fact are pending before the Board, the Board may order consolidation of the cases. Fed. R. Civ. P. 42(a); TBMP § 511; *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 U.S.P.Q.2d 1154, 1156 (TTAB 1991); *Estate of Biro v. Bic Corp.*, 18 U.S.P.Q.2d 1382, 1384 n.3 (TTAB 1991). In determining whether to consolidate proceedings, the Board weighs the savings in time, effort, and expense that may be gained from consolidation against any prejudice or inconvenience which may be caused thereby. *See, e.g., World Hockey Association v. Tudor Metal Products Corp.*, 185 U.S.P.Q. 246, 248 (TTAB 1975). Consolidation is discretionary with the Board, and may be ordered upon motion granted by the Board, or upon stipulation of the parties approved by the Board, or upon the Board's own initiative. *See, e.g., Hilson Research Inc. v. Society for Human Resource Management*, 27 U.S.P.Q.2d 1423, 1424 n.2 (TTAB 1993); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, *supra*, at 1156.

Here, the parties to the instant proceeding and the Consolidated Proceeding are identical. Likewise, the issues to be determined in all of the proceedings are clearly similar and related, as they involve substantially the same questions of fact and law with respect to Registrant's registrations and applications for "CHACHI" marks. In particular, all of the proceedings at issue concern the marks "CHACHI", "CHACHI MOMMA", and "CHACHIPANTS" and the

Registrant's purported right to use Petitioner's principal's identical "CHACHI" name, likeness and mark, and the likelihood of confusion and other issues arising from Registrant's registration and use of the marks -- nearly identical issues across all of the proceedings. Accordingly, there is good cause to consolidate this proceeding with the pending Consolidated Proceeding, as it would serve the interests of efficiency and save considerable time, effort, and expense for all parties to the proceeding, and would not prejudice any party.

B. Upon Consolidation, the Most Recently Instituted Deadlines Should Be Adopted for the Consolidated Proceeding.

Pursuant to TBMP § 511, "Upon consolidation, the Board will reset dates for the consolidated proceeding, usually by adopting the dates as set in the most recently instituted of the cases being consolidated." *See also* Fed. R. Civ. P. 42(a) ("If actions before the court involve a common question of law or fact, the court may: ... (3) issue any other orders to avoid unnecessary cost or delay.").

Petitioner respectfully requests that the most recently instituted proceeding deadlines be adopted for all of the proceedings, upon consolidation. The dates currently set in this most recent proceeding are as follows:

Deadline for Discovery Conference	10/27/2016
Discovery Opens	10/27/2016
Initial Disclosures Due	11/26/2016
Expert Disclosures Due	3/26/2017
Discovery Closes	4/25/2017
Plaintiff's Pretrial Disclosures	6/9/2017
Plaintiff's 30-day Trial Period Ends	7/24/2017
Defendant's Pretrial Disclosures	8/8/2017
Defendant's 30-day Trial Period Ends	9/22/2017
Plaintiff's Rebuttal Disclosures	10/7/2017

Re-setting and adopting the most recently instituted deadlines is particularly appropriate in this case, for the reasons set forth below.

i. Discovery Is Needed to Respond to the Most Recent Opposition.

Initially, the parties will of course need to conduct discovery in order to be in a position to adequately prosecute and defend this opposition. Because discovery must be conducted in the new opposition in any case, it simply makes sense to conduct the related and overlapping discovery in this and the pending Consolidated Proceeding together.

ii. The Parties Can Efficiently Conduct Discovery for Purposes of the New Opposition and the Consolidated Proceeding.

Given the near-identical factual and legal issues in this new opposition and the pending Consolidated Proceeding, the discovery that Petitioner will be seeking with respect to the new opposition overlaps substantially with the discovery in relation to the Consolidated Proceeding. Thus, Petitioner anticipates no difficulty in efficiently coordinating its discovery to investigate the facts relevant to both the new opposition and the pending Consolidated Proceeding, given the similarity of issues.

Moreover, Registrant will be required to respond to written and deposition discovery with respect to the most recent opposition proceeding *in any event*, and that discovery clearly involves the same factual underpinnings at issue in the Consolidated Proceeding. Accordingly, a re-setting of all dates (1) causes no prejudice to Registrant, who will be required to respond to this discovery in any event, and (2) does not provide either party any “additional” discovery, and instead merely makes it possible for them to make more efficient use of the discovery that they will be taking in the most recent opposition proceeding, anyway.

iii. Registrant Will Not Be Prejudiced By Adoption of the Most Recently Instituted Deadlines.

Finally, Registrant will not be prejudiced by consolidation of the proceedings and adoption of the most recently set dates. Because no deposition discovery was ever conducted in the Consolidated Proceeding, there will be no duplication of discovery efforts. Likewise, Registrant has incurred minimal attorneys' fees or costs with respect to the closed discovery period. Additionally, neither of the parties has taken any testimonial depositions. Finally, there will clearly be no actual harm to Registrant's ability to litigate the consolidated case, given that adoption of the most recent dates will have no impact at all on Registrant's opportunity to obtain relevant evidence and engage in litigation on the merits. In such circumstances, the dates should be re-set. *See, e.g., Sunkist Growers, Inc.*, 229 U.S.P.Q. 147 (TTAB 1985) (granting opposer's request to extend the discovery cutoff, where the applicant failed to demonstrate that any "specific harm or prejudice ... would result to applicant").

On the other hand, if the most recently set dates are *not* adopted and the expired dates remain operative post-consolidation, Petitioner will be left with no option but to file a civil litigation action on the same issues in order to protect its rights, which would necessarily stay these related TTAB proceedings. If Registrant is forced to proceed in a civil litigation forum, however, that would clearly impose additional delay and cost on both sides of these proceedings. That additional delay and expense can be avoided via the simple and expedient solution of consolidating these proceedings and adopting the most recent dates, so that Registrant and Petitioner both may engage in discovery and promptly prepare for a consolidated trial in this forum.

IV. Conclusion

For the foregoing reasons, Petitioner respectfully requests that the Board (a) consolidate this proceeding with prior proceedings nos. 91223750 (the Consolidated Proceeding), no. 91223751, and no. 92061870; and (b) adopt the most recently set dates in that consolidated proceeding, including discovery and other dates that would otherwise be closed in the previously-filed related proceedings, as follows:

Deadline for Discovery Conference	10/27/2016
Discovery Opens	10/27/2016
Initial Disclosures Due	11/26/2016
Expert Disclosures Due	3/26/2017
Discovery Closes	4/25/2017
Plaintiff's Pretrial Disclosures	6/9/2017
Plaintiff's 30-day Trial Period Ends	7/24/2017
Defendant's Pretrial Disclosures	8/8/2017
Defendant's 30-day Trial Period Ends	9/22/2017
Plaintiff's Rebuttal Disclosures	10/7/2017
Plaintiff's 15-day Rebuttal Period Ends	11/6/2017

Dated: September 10, 2016

MICHELMAN & ROBINSON, LLP

By: /Victor K. Sapphire/ 

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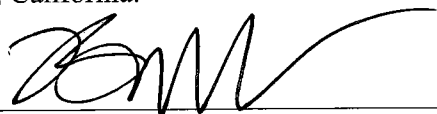
CERTIFICATE OF SERVICE

I, Victor Sapphire, hereby declare that I am a partner in the law firm of Michelman & Robinson, LLP, 10880 Wilshire Blvd., 19th Floor, Los Angeles, California 90024; that I am over 18 years of age and not a party to the within action; and that I served the a copy of the foregoing document, **MOTION TO CONSOLIDATE AND RE-SET DEADLINES**, on the date indicated below, by causing a true copy to be deposited in the United States mail, first class postage prepaid to the following addresses:

Ben Lila, Esq. Joseph A. Mandour, Esq. Mandour & Associates, APC 8605 Santa Monica Blvd., Ste 1500 Los Angeles CA 90069

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 12, 2016 at San Francisco, California.



Victor K. Sapphire

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via ESTTA on the date shown below to the United States Patent and Trademark Office.

Executed on September 12, 2016 at San Francisco, California.



Victor K. Sapphire